

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 23

MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 02-CV-2701

MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT,
a Wisconsin municipal body corporate,

Unclassified - Civil: 30703

Defendant.

NOTICE OF MOTION AND JOINT MOTION TO AMEND ORDER
APPROVING SETTLEMENT STIPULATION

PLEASE TAKE NOTICE that the plaintiff, State of Wisconsin, and the defendant, Milwaukee Metropolitan Sewerage District (MMSD), by their attorneys, hereby jointly move the Court, pursuant to Wis. Stat. § 806.07(1), to modify the final order entered in this matter on May 29, 2002 (the "2002 Order"), so as to allow the parties, by this mutual agreement, to modify the settlement stipulation (the "2002 Stipulation") which was approved and incorporated into the 2002 Order, in the specific respects described in this motion.

As grounds for this motion, the parties state as follows:

1. Under the terms of the 2002 Order and the 2002 Stipulation which it approved, the Court retained continuing jurisdiction over this case in order to enforce the terms, conditions, and agreements of the 2002 Stipulation.

2. The parties now wish to amend the list of projects described in Exhibit I of the 2002 Stipulation by deleting certain items because, after subsequent detailed engineering analyses, the parties have concluded those projects are not necessary to achieve the purposes of the 2002 Stipulation. The projects which the parties now agree should be deleted from Exhibit I are described in a letter from MMSD to the Wisconsin Department of Natural Resources (DNR) dated March 22, 2006, a copy which is attached hereto as Exhibit A, and in a letter from MMSD to DNR dated July 28, 2006, a copy of which is attached hereto as Exhibit B.

3. The projects which the parties now request be deleted from Exhibit I of the 2002 Stipulation were originally included in the list either because they were recommended in MMSD's 2010 Facilities Plan or because they were included in the District's six year financing plan as it existed in 2002. Neither the 2010 Facilities Plan nor the six year financing plan included the preliminary engineering studies now available. Upon the subsequent completion of such engineering studies and related investigations, however, the parties have determined that the following particular projects are unnecessary and should be deleted from Exhibit I:

- a. North 68th Street Relief Sewer;
- b. South 13th Street Relief Sewer;
- c. Providence Avenue Metropolitan Intercepting Sewer;
- d. Caddy Vista Pump Station;
- e. Combined Sewer Overflow Rehabilitation, Hawley Road;
- f. Jones Island Sitework Phase III, West Package;

- g. South Shore Digester Mixing;
- h. North Sherman Boulevard Relief Sewer; and
- i. CMIS – Basin B, South Sixth Street/Cleveland Avenue Siphon Rehabilitation Project.

The specific reasons for the deletion of each of these projects are discussed in more detail in Exhibits A and B, attached hereto.

4. The parties believe the deletion of these specific projects from Exhibit I of the 2002 Stipulation is consistent with the continuing missions of both parties, as described in the 2002 Stipulation, to meet the requirements of the federal and state Clean Water Acts, including the elimination of sanitary sewer overflows, the further reduction of combined sewer overflows, and the redress of alleged sanitary sewer overflow violations of MMSD's Wisconsin Pollutant Discharge Elimination System (WPDES) permit. The parties believe these proposed changes, if approved by the Court, will have no impact on the ability of the MMSD to comply with the federal or state Clean Water Acts, including compliance with its WPDES permit; or on the frequency or volume of separate or combined sewer overflows or on treatment plant capacity.

5. The parties believe this amendment of the 2002 stipulation to be fair, reasonable and adequate. They also agree, however, that the Court should defer entering an order approving this amendment of the 2002 Stipulation for a period of at least thirty days after this motion has been filed and its terms published so that the public may review and comment upon the proposed amendment. The plaintiff shall publish a Class I notice in the official newspaper of the State of Wisconsin describing the filing of

this motion, its availability for review, and the opportunity to file comments. During that thirty-day comment period the plaintiff will accept and consider written comments regarding this motion and thereafter promptly file those written comments with the Court and provide copies to MMSD. In addition to filing this motion with the Court, the plaintiff shall make this motion available for inspection at the offices of the Wisconsin Department of Justice, the DNR, and on the Internet web site of the Department of Justice, located at <http://www.doj.state.wi.us/>. Written comments regarding this motion should be mailed to:

Assistant Attorney General Thomas L. Dosch
Wisconsin Department of Justice
Post Office Box 7857
Madison, WI 53707-7857

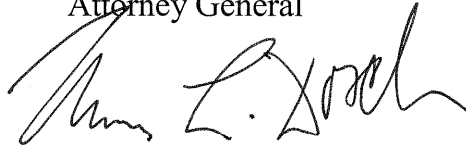
6. The plaintiff and MMSD reserve a right to withdraw from or withhold their consent to entry of the proposed order for modification of the 2002 Stipulation if the public comments received disclose facts or considerations which indicate the proposed amendment of the 2002 Stipulation will not be fair, reasonable and adequate. The plaintiff's and MMSD's rights to withdraw from the motion to amend the 2002 Stipulation shall terminate if not exercised in writing and filed with the Court within fifteen days after the close of the public comment period described in the preceding paragraph. If neither party opts to withdraw from the motion both agree that an order granting the motion may be entered without further hearing or notice to the parties.

For the foregoing reasons, the parties respectfully request that, if neither party withdraws after the public comment period, the Court grant this Joint Motion to Amend

the 2002 Order by approving the deletion from Exhibit I of the 2002 Stipulation the projects identified above and in Exhibits A and B attached hereto.

Dated this 29th day of August, 2006

PEGGY A. LAUTENSCHLAGER
Attorney General



THOMAS L. DOSCH
Assistant Attorney General
State Bar No. 1017026

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0770

Dated this 28th day of August, 2006

MICHAEL J. McCABE



Director of Legal Services
Milwaukee Metropolitan
Sewerage District
State Bar No. 01011060

Attorney for Defendant
Milwaukee Metropolitan Sewerage District

Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Post Office Box 3049
Milwaukee, Wisconsin 53201-3049
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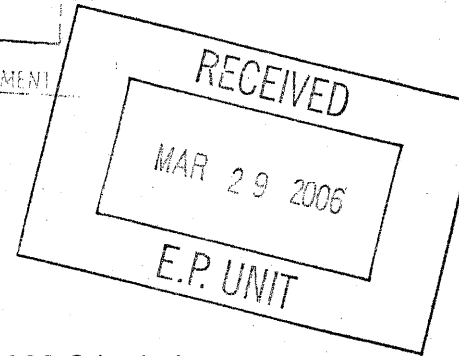
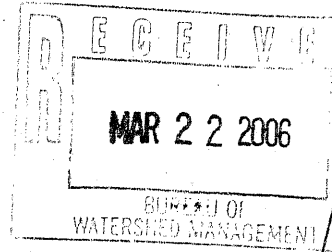


Preserving The Environment •
Improving Water Quality

Kevin L. Shafer, P.E.
Executive Director

March 22, 2006

Mr. Gerald Novotny, P.E.
Wastewater Engineer
Wisconsin Department of Natural Resources
101 S Webster Street – WT/2
Madison, WI 53702



Subject: Request for amendment to project list (Exhibit I) under the 2002 Stipulation

Dear Mr. Novotny:

The Milwaukee Metropolitan Sewerage District (MMSD) has completed preliminary engineering and investigations for a number of projects listed in Exhibit I of the 2002 Stipulation. MMSD is requesting that the projects listed below be removed from Exhibit I of the 2002 Stipulation, pursuant to Paragraph 14.B of the Stipulation. These changes, if approved by the DNR as requested, will not result in delays in the completion of the required work in accord with the 2002 Stipulation.

Enclosed you will find various reports that present information regarding the following projects:

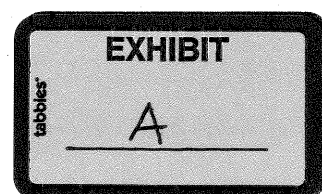
- North 68th Street Relief Sewer
- South 27th Street Relief Sewer
- South 13th Street Relief Sewer
- Providence Avenue MIS.

In addition, we are requesting the following projects be deleted from Exhibit I, based upon the details provided in this letter:

- Caddy Vista Pump Station
- CSO Rehabilitation, Hawley Road
- Jones Island Sitework Phase III, West Package
- South Shore Digester Mixing

The reasons for our requests vary with each project and are described briefly in the project descriptions below. In general terms, deletion of each of these projects from Exhibit I is being requested as further, more detailed engineering analysis indicates that the project does not need to be undertaken as originally proposed. Further, these

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260 W. Seeboth Street, Milwaukee, WI 53204-1446
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changes will have no impact on the frequency or volume of SSOs or CSOs, or treatment plant capacity.

The total project costs resulting from these requests, along with changes in actual and estimated costs of all other stipulated projects (since the Stipulation was entered into), have resulted in an overall cost increase of \$102 million, as compared to the total project costs in the 2002 Stipulation.

NORTH 68TH STREET RELIEF SEWER C05028

The 2010 Facilities Plan recommended construction of the N. 68th Street Relief Sewer, 2010 Facilities Plan Project 2, as a means of alleviating surcharging in the area of N. 68th Street to N. 76th Street and W. Capital Drive to W. Marion Avenue. As we reviewed the 2010 Facility Plan model, the PE study determined that the 2010 hydraulic simulations incorrectly included flows from areas that were diverted to a City relief sewer constructed in 1979. These flows accounted for over half of the flows tributary to the metropolitan interceptor sewer (MIS) in this area. The current study concludes that the 2010 model would not have predicted capacity problems in this area of the MIS if the correct service area were used. The study also reviewed City basement back up records in the project area and concluded that they were not a result of capacity problems in the MIS. Therefore, we request that this project be removed from Exhibit I of the Stipulation.

SOUTH 27TH STREET RELIEF C01005

This project, when originally included in Exhibit I to the Stipulation, included both the South 27th, 2010 Facilities Plan Project 20, and the South 13th, 2010 Facilities Plan Project 24, Relief Sewers.

South 13th Street project:

The PE study found that the 2010 hydraulic model assumed that all the flow from the basin was entering the existing S. 13th Street sewer at the upstream end of the MIS. The PE study found that the model would not have predicted capacity problems had the flows been input at their actual locations. Therefore, because the S. 13th Street project was found to have adequate capacity, this project is requested to be removed from Exhibit I of the Stipulation.

South 27th Street project

This project is similar in that the 2010 Facility Plan hydraulic model assumed that all the flow from the basin was entering at the upstream end of the MIS. When the model was rerun during the PE study with the flows input at the actual locations, surcharging was found only at one section at the downstream end. The original recommendation of 1050 feet of 15 inch sewer relay was changed to

approximately 225 feet of 15 inch relief sewer. Therefore, this project is still recommended to be completed but the scope of the project will be decreased.

PROVIDENCE AVENUE MIS C05020

The Providence Avenue MIS Replacement project (C05020D01) was identified as a MIS that could not adequately handle existing peak wet weather flows in a June 2000 Preliminary Engineering (PE) report for the Central MIS Conceptual Improvement Plan. The PE report described the Providence Avenue MIS as having hydraulic deficiencies which resulted in wet weather flow being diverted to the Inline Storage System (ISS) while the MIS system downstream of the Providence Avenue MIS had remaining capacity. The 2020 Facilities Planning (FP) Team recently evaluated the hydraulic impacts of constructing the proposed Providence Avenue MIS Replacement project. The 2020 Facilities Plan Team determined that construction of the Providence Avenue MIS Replacement project would result in a minimal increase in MIS flow to the Jones Island Wastewater Treatment Plant, less than one percent for the wet weather event used for analysis. Also, the change in available system wide CSO and SSO storage volumes would be negligible, within the accuracy of the model, if the proposed project were constructed. Therefore, construction of the project would result in minimal flow increases in the MIS system, and would have no effective increase in system wide CSO or SSO storage volumes at a construction cost of approximately \$3.1 million. Therefore, we request that this project be removed from Exhibit I of the Stipulation.

CADDY VISTA PUMP STATION C01003

The Caddy Vista Pump Station was first envisioned in 1998 when construction of the Pennsylvania Avenue MIS was underway. The Pennsylvania Avenue MIS ended approximately 2500 feet short of the Milwaukee County Line. The Caddy Vista Sanitary District approached the MMSD and requested that the MIS be extended to the county line so that they could access the MIS by means of a gravity sewer. A project was inserted into the 1999 Capital budget in response to this request. However, the MMSD does not have a legal obligation to provide service to the Milwaukee County Line. Caddy Vista Sanitary District, now part of the Town of Caledonia, has sufficient capacity to continue to pump its flow to the MIS. Therefore, we request that this project be removed from Exhibit I of the Stipulation.

CSO REHABILITATION, HAWLEY ROAD I03003

This project originated from a 1996 condition assessment study of all the CSO's on the Menomonee and Kinnickinnic Rivers, and includes rehabilitating the combined sewer overflow from West Vilet Street to the Menomonee River. Rehabilitation would have essentially no impact on the overflow's or upstream system's hydraulic capacity.

The District recently reviewed, via videotape, the condition of this CSO, and concluded that the CSO has at least 6 years of service life left. The District, in conjunction with the City of Milwaukee, has also been investigating the upstream sewer shed, as it may be possible to reduce flows to the combined sewer system. This may impact the configuration and/or need for this project. The video tape of the Hawley Road CSO (CSO 184) was recently analyzed by Earthtech and they concluded that the CSO had at least six years of service left. This CSO structure will be inspected routinely over the next 10 year period. It is therefore recommended that this project be delayed until inspection shows that replacement is needed. Further, completion or non-completion of this project will have no impact on combined and separate sewer overflows. Therefore, we request that this project be removed from Exhibit I of the Stipulation.

JONES ISLAND SITEWORK PHASE III, WEST PACKAGE J06002

This project includes improvements to the Jones Island storm sewer system, a new yard lighting system, a water main extension, and repaving portions of the Jones Island grounds. This project is not immediately necessary to complete: these are upgrades to systems that are ancillary to the treatment process, and the needs are simply not critical at this time. Further, this project will not impact the plant treatment capacity, operating efficiency of the treatment process, and either the volume or frequency of sanitary or combined sewer overflows. Ultimately, we do expect to implement this project, but it may not be constructed until after the deadline listed in the Stipulation. Therefore, we request that this project be removed from Exhibit I of the Stipulation.

SOUTH SHORE DIGESTER MIXING S04002

The scope of this project is to implement improvements to the digester mixing system at the South Shore Treatment Facility. There is not an immediate need for this project: the project's original intent was to improve mixing within the South Shore Digesters. There continues to be debate and discussion with staff about the need for this project. Further, the recent LeSaffre plant shutdown may significantly influence the solids disposal strategy at both Jones Island and South Shore Plants. We intend to delay this project while the impact of LeSaffre plant can be assessed. Ultimately, there may be no need for this project. Regardless of the need for this project, however, this project has no influence on treatment plant wet weather capacity or wet weather operations, and has no impact on the number or volume of sanitary or combined sewer overflows. Therefore, we request that this project be removed from Exhibit I of the Stipulation.

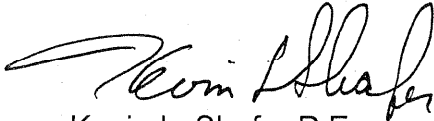
This letter should be considered to be a request by MMSD for approval of these preliminary engineering analyses and for an amendment of the approved 2010 Facilities Plan to delete or modify these projects as requested above.

Gerald Novotny, P.E.
March 22, 2006
Page 5

Finally, we intend to submit some additional projects to be removed from Exhibit I. These projects will be submitted, along with backup documentation, as soon as they are available.

Feel free to contact me or Mike Martin, Director of Technical Services, if you have any questions regarding this request. Thank you for your attention to this matter.

Very truly yours,



Kevin L. Shafer P.E.
Executive Director

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Attachments: North 68th Street Relief Sewer
South 27th Street Relief Sewer
South 13th Street Relief Sewer
Providence Avenue MIS

Cc: Mike McCabe
Mike Martin, P.E.



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Improving Water Quality

Kevin L. Shafer, P.E.
Executive Director

MMSD LEGAL SERVICES
06 JUL 31 PM 3: 37

July 28, 2006

Mr. Gerald Novotny, P.E.
Wastewater Engineer
Wisconsin Department of Natural Resources
Division of Environmental Quality
101 South Webster Street
P.O. Box 7921
Madison, WI 53707-7921

Subject: Request for amendment to project list (Exhibit I) under the 2002 Stipulation

Dear Mr. Novotny:

The Milwaukee Metropolitan Sewerage District (MMSD) has completed preliminary engineering and investigations for two projects listed in Exhibit I of the 2002 Stipulation. MMSD is requesting that N. Sherman Blvd. Relief Sewer and CMIS – Basin B 6th and Cleveland Siphon be removed from Exhibit I of the 2002 Stipulation, pursuant to Paragraph 14.B of the Stipulation. The change, if approved by the DNR as requested, will not result in delays in the completion of the required work in accord with the 2002 Stipulation.

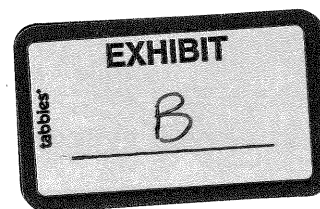
Deletion of these two projects from Exhibit I is being requested as further, more detailed engineering analysis indicates that the projects do not need to be undertaken as originally proposed.

Total project costs resulting from this request, along with changes in actual and estimated costs of all other stipulated projects (since the Stipulation was entered into), have resulted in an overall cost increase of approximately \$167 million, as compared to the total project costs in the 2002 Stipulation.

N. SHERMAN BLVD. RELIEF SEWER

This project, when originally included in Exhibit I to the Stipulation, included both the N. Sherman Blvd. Relief Sewer (2010 Facilities Plan Project 3) and N. 31st Street Relief Sewer (2010 Facilities Plan Project 12). The N. 31st Street Relief Sewer Project was constructed in 2005 for a total project cost of \$3,220,214.

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Mr. Gerald Novotny, P.E.
Wisconsin Department of Natural Resources
July 28, 2006
Page 2 of 3

For the N. Sherman Blvd. Relief Sewer, the 2010 Facilities Plan recommended relaying an existing 12-inch MIS with a 15-inch MIS. Presently the system in this area is not experiencing sanitary sewer overflows (SSOs) or basement backups related to the MIS. A recently completed preliminary engineering study found that while the MIS does surcharge under the 2010 design flow event, critical elevations in the local sewer are not exceeded. Further, results from the District's 2020 Facilities Plan models do not indicate a need for this project. Therefore, because the N. Sherman Blvd. Relief Sewer was found to have adequate capacity both now and in the future, we request this project be removed from Exhibit I of the Stipulation.

CMIS - BASIN B 6TH AND CLEVELAND SIPHON

The South Sixth Street/Cleveland Avenue Siphon Rehabilitation project (C06008C01) was a product of the District's Central MIS Improvement Project Study. This project was not recommended in the 2010 Facility Plan, but was included on Exhibit I to Stipulation because it was among the projects planned under the six-year financing plan at the time of execution of the 2002 Stipulation. An August 2000 Technical Memorandum under the Central MIS project had recommended the existing single 42-inch barrel siphon remain as the means of conveying dry weather flow, with no need for a second, redundant barrel.

In August 2000, the existing siphon could not be inspected due to an issue with a flap gate at the structure, so the structural integrity of the existing siphon was unknown at that time. The District then implemented improvements to the siphon appurtenances in 2002, including rebuilding the top half of the Drop Structure, applying a calcium aluminate lining, rebuilding the dewater/blow off piping and cleaning/inspecting the siphon barrel and air jump. Based on a review of the video inspection tapes, the siphon barrel and air jump are both structurally sound, and therefore structural rehabilitation is not required. Velocity in the siphon barrel was noted to be less than 2 fps, but it is more cost-effective to clean the siphon barrel as needed than to install a liner. The air jump had material remaining that was unable to be removed during the cleaning process, but does not impact the hydraulic operation of the siphon, since it is used for transferring odorous air from the south side of the siphon to the Central MIS.

Further, a second barrel is not necessary as dry weather flow is diverted to the Jones Island WWTP and wet weather flow is diverted to the South Shore WWTP. Maintenance can be accomplished by diverting all flow to the South Shore WWTP, which satisfies the objective of not diverting flow to the lake or the deep tunnel.

Mr. Gerald Novotny, P.E.
Wisconsin Department of Natural Resources
July 28, 2006
Page 3 of 3

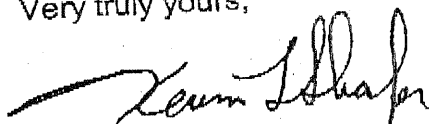
The estimated construction cost of this project is \$3.6 million. Based on the condition of the existing siphon and the information presented, we request this project be removed from Exhibit I of the Stipulation because it is unnecessary.

This letter should be considered a request by MMSD for approval of these two preliminary engineering analyses and for an amendment of the approved 2010 Facilities Plan to delete the N. Sherman Blvd. project as requested above.

After the Department has reviewed this request, and if you approve, District legal staff will coordinate with the State Attorney General's office to include these projects in the proposed joint motion to amend the Stipulation.

Feel free to contact me or Mike Martin, Director of Technical Services at (414) 225-2148, if you have any questions regarding this request. Thank you for your attention to this matter.

Very truly yours,



Kevin L. Shafer, P.E.
Executive Director

Attachments: N. Sherman Blvd. Relief Sewer
CMIS - Basin B 6th and Cleveland Siphon

Copy without attachments: Michael Martin, MMSD, Director of Technical Services
Michael McCabe, MMSD, Director of Legal Services